Sinnasamy a/l Kaliappan v Public Prosecutor

HIGH COURT (MELAKA) — CRIMINAL APPEAL NO MT1–41–17 OF 2003
LOW HOP BING J
15 JUNE 2005

Criminal Law — Criminal intimidation — Whether weapon must be produced to sustain a charge of criminal intimidation or mere words would suffice — Whether accused's intent can be inferred from all the circumstances of the case — Penal Code ss 503 & 506

This was an appeal by the appellant ('the accused') against the decision of the magistrate who had found the accused guilty of an offence of criminal intimidation under s 503 of the Penal Code ('the Code'). The evidence adduced in the trial court revealed that, the complainant was at a house ('the house') when she heard a loud voice in front of the house. She came out of the house and saw the accused holding a parang. The accused threatened the complainant by asking her to pay a sum of RM50,000 in five days, otherwise the accused would kill the complainant and her family.

Held, dismissing the appeal:

(1) The finding of facts did show that the accused had used the parang to hit the metal gate of the house, thereby leaving numerous marks thereon and that the accused had also threatened to kill the complainant. This was corroborated by the first information report lodged by the complainan t and the evidence of other prosecution witnesses. There was sufficient evidence adduced in the court below to support this finding of facts (see para 15). The absence of the parang did not *ipso facto* detract from the finding of fact that the accused was holding and using it to hit the metal gate of the house. It is not essential that a weapon must be produced in order to sustain a charge under s 503 of the Code as mere words would suffice (see paras 15 and 16).

(2) The accused's intent by its very nature cannot be proved by direct evidence but may be inferred from all the circumstances of the case. It was clear that the magistrate had made the correct inference that the accused had the necessary intent to cause alarm to the complainant (see para 20).

[**Bahasa Malaysia summary**

Ini adalah rayuan oleh perayu ('tertuduh') terhadap keputusan majistret yang mendapati tertuduh bersalah untuk satu kesalahan intimidasi jenayah di bawah s503 Kanun Keseksaan ('Kanun itu'). Keterangan yang diajukan di hadapan mahkamah perbicaraan menunjukkan bahawa, pengadu berada di rumah ('rumah itu') apabila beliau terdengar suara yang kuat daripada bahagian depan

rumah. Beliau terus keluar dari rumah dan nampak tertuduh memegang sebilah parang. Tertuduh mengancam pengadu dan menyuruhnya membayar sejumlah RM50,000 dalam masa lima hari sekiranya tidak tertuduh akan membunuh pengadu dan keluarganya.

Diputuskan, menolak rayuan itu:

(1) Penemuan fakta-fakta telah menunjukkan bahawa tertuduh menggunakan parang itu untuk memukul pintu besi rumah itu, oleh itu meninggalkan beberapa kesan atas pintu itu dan tertuduh juga telah mengancam untuk membunuh pengadu. Keterangan ini disokong oleh laporan keterangan pertama yang dilaporkan oleh pengadu dan keterangan saksi-saksi pendakwaan yang lain. Terdapat keterangan yang mencukupi di mahkamah di bawah untuk menyokong penemuan fakta-fakta ini (lihat perenggan 15). Ketiadaan parang itu tidak *ipso facto* bercanggah dengan penemuan fakta bahawa tertuduh sememangnya memegang sebilah parang dan menggunakan parang itu untuk memukul pintu besi rumah itu. Bukanlah suatu yang penting bahawa senjata itu mesti dibawa ke hadapan mahkamah sebelum satu tuduhan boleh dibuat di bawah s 503 Kanun itu kerana sekadar perkataan-perkataan adalah mencukupi (lihat perenggan 15 dan 16).

(2) Niat tertuduh berdasarkan sifat-sifatnya tidak boleh dibuktikan secara keterangan terus tetapi boleh dibuat inferens dari semua keadaan-keadaan kes. Ia adalah jelas bahawa majistret telah membuat inferens yang betul dan tertuduh mempunyai niat yang secukupnya dalam menakutkan pengadu (lihat perenggan 20).]

Notes

For cases on criminal intimidation, see 4 *Mallal's Digest* (4th Ed, 2003 Reissue) paras 1894–1896.

Cases referred to

Lee Yoke Choong v Public Prosecutor [1964] MLJ 138 (refd)

Legislation referred to

Evidence Act 1950 s 60(1)(a)
Penal Code ss 503, 506

Ravinathan Muthiah (Ravi Muthiah & Co) for the accused.

Faradziah bte Kasah (Deputy Public Prosecutor) (Pejabat Penasihat Undang-Undang Negeri Melaka) for the prosecution.

Low Hop Bing J:

I APPEAL

[1] This is an appeal by the appellant-accused ('the accused') against the decision of the learned magistrate who had on 28 March 2003 found the accused guilty and convicted him of an offence punishable under s 506 of the Penal Code and imposed a fine of RM3,500 or six months imprisonment in default.

II BACKGROUND

[2] The charge against the accused reads:

> Bahawa kamu pada 14 September 2002 jam lebih kurang 6.30 petang di rumah bernombor J 4444 Taman Maju di dalam daerah Jasin di dalam Negeri Melaka telah melakukan kesalahan menakutkan secara jenayah iaitu dengan menggunakan sebilah parang terhadap penama Sellamah a/p Nalli K/P No 410609–01–5264. Oleh yang demikian kamu telah melakukan suatu kesalahan yang boleh dihukum di bawah Seksyen 506 Kanun Keseksaan.
>
> (My translation:
>
> That you on 14 September 2002 at about 6.30pm at house No J 4444 Taman Maju in the district of Jasin in the state of Melaka did commit the offence of criminal intimidation, to wit by means of a parang, on one Sellamah a/p Nalli I/C No 410609–01–5264. You have thereby committed an offence punishable under section 506 of the Penal Code.)

[3] A reference hereinafter to a section is a reference to that section in the Penal Code, unless otherwise stated.

[4] The accused claimed trial to the charge.

[5] Evidence adduced in the trial court revealed that on 14 September 2001 at about 6.30pm, the complainant one Sellamah a/p Nalli (SP1) was at house No J 4444 Taman Maju, Jasin ('the house') when she heard a loud voice in front of the house. She came out of the house and saw her son-in-law, ie the accused holding a parang which he had taken out of a motorcar belonging to his friend, one Arumugam Samy (SP4) who had remained in the car. The accused threatened the complainant by asking her to pay a sum of RM50,000 in five days, otherwise the accused would kill the complainant and her family. The accused demanded the return, to Masai Johor, of his wife, ie the complainant's daughter who was then in the complainant's house. The complainant made a police report in relation to the incident.

[6] The complainant's husband (SP3) one Kaliappan a/l Sellapan gave substantially the same evidence, adding that the accused had hurled filthy words at the complainant and that the sum of RM50,000 was demanded by the accused who had allegedly advanced the same to the complainant. SP3

also testified that the accused has occupied the complainant's house in Masai and the accused now needed the money to renovate the Masai house. When the accused was demanding the sum and holding the parang, the accused and the complainant were near each other, being merely separated by the metal gate of the house. The accused had used the parang to hit the metal gate which showed obvious marks of the force used thereon.

[7] The evidence of Arumugam Samy (SP4) the accused's friend confirmed the said incident and the altercations between the accused and the complainant, in particular the fact that the accused had intimidated the complainant.

[8] On the above evidence, the learned magistrate found that the prosecution had established a *prima facie* case and called for the defence.

[9] In his defence, the accused gave evidence on oath, in which the accused admitted that he was furious in view of the bad blood between him and the complainant and that he had come to the house to take his wife from the complainant and return to Johor.

[10] Having considered the entire evidence, the learned magistrate found the accused guilty and convicted him.

III ESSENTIAL INGREDIENTS OF SECTION 503

[11] Learned counsel Mr Ravinathan Muthiah submitted for the accused that there was no evidence that the complainant was put in fear as she was in the house while the accused was outside the locked metal gate, and the prosecution has not produced the parang as an exhibit. He added that the complainant had called the accused 'pondan' (transverstite) thereby causing the accused's fury.

[12] Learned deputy public prosecutor Ms Faradziah bte Kasah supported the learned magistrate's entire decision.

[13] To bring about a clear and comprehensive scope of the charge, it is appropriate for me to refer to the relevant provision of s 503 as follows:

> 503 Criminal Intimidation
>
> Whoever threatens another with any injury to his person … with intent to cause alarm to that person … commits criminal intimidation.

[14] The essential ingredients of criminal intimidation under s 503 are:

(1) threatening another (the complainant) with any injury to his (her) person; and

(2) intent to cause alarm to that person (the complainant).

[15] The above finding of facts did show that the accused had used the parang to hit the metal gate of the house, thereby leaving numerous marks

thereon as shown in photographs C and D at p 48 of the appeal record and that the accused had also threatened to kill the complainant. This was corroborated by the first information report lodged by the complainant and the evidence of other prosecution witnesses. In my view there is sufficient evidence adduced in the court below to support this finding of facts.

[16] The absence of the parang does not *ipso facto* detract from the finding of fact that the accused was holding and using it to hit the metal gate of the house, thereby leaving undisputed and obvious telltale marks which were corroborated by the direct oral evidence adduced through other prosecution witnesses under s 60(1)(a) of the Evidence Act 1950.

[17] It is not essential that a weapon must be produced in order to sustain a charge under s 503 as mere words would suffice. By way of illustration, where an accused gave a complainant two alternatives viz to withdraw a police report lodged against the accused, or else acid would be thrown on the complainant to blind him, that was sufficient to bring the accused within the offence under s 503: per Ong J in *Lee Yoke Choong v Public Prosecutor* [1964] MLJ 138.

[18] Reverting to the finding of facts in the court below, there can be no doubt that the first ingredient has been proved by the prosecution.

[19] The second ingredient ie the accused's intent by its very nature cannot be proved by direct evidence but may be inferred from all the circumstances of the case. In the instant appeal, it is clear to me that the learned magistrate has made the correct inference that the accused had the necessary intent to cause alarm to the complainant.

[20] The learned magistrate is correct in arriving at the conclusion that the offence under s 503 has been proved beyond all reasonable doubt against the accused, in finding the accused guilty and convicting him on the charge.

IV SENTENCE

[21] The defence has made no submission on the sentence imposed on the accused.

[22] The prosecution, on the other hand, urged the court to uphold the sentence.

[23] Section 506 where relevant provides for the punishment as follows:

> Section 506 Punishment for Criminal Intimidation
>
> Whoever commits the offence of criminal intimidation … and if the threat is to cause death or grievous hurt, … shall be punishable with imprisonment for a term which may extend to seven years, or with fine or with both.

[24] As there was evidence that the accused had threatened to kill the complainant, the sentence to be imposed is governed by the second limb of s 506 as reproduced above, which the court below has duly considered in the light of all the extenuating circumstances of the case when the fine of RM3,500 was imposed on the accused. I am unable to find any legal or factual error in the sentence imposed.

V CONCLUSION

[25] This appeal being without merit is dismissed and the entire decision of the learned magistrate is hereby affirmed.

Appeal dismissed.

Reported by Peter Ling